Ng Kim Chor v HR Hochstadt & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R3–24–26 OF 1998
NIK HASHIM J
28 DECEMBER 1998

Administrative Law *— Remedies — Declaration — Declaration that disqualification of professional jockey had no effect and ultra vires — Application to restrain from giving effect*

The plaintiff was a professional jockey. The defendants were office bearers of the Malayan Racing Association ('MRA'). The plaintiff applied for a declaration that his disqualification of 12 months was in breach of the rules of racing of the MRA, in breach of natural justice, ultra vires and void and of no effect and sought for an order that the defendants be restrained from giving effect to the disqualification. The facts were that the plaintiff was charged and convicted under r 144(a) of the Malayan Racing Association Calendar 1994 and was disqualified for 12 months. On appeal, the stewards amended the charge, found him guilty and suspended him for six months under r 144(b)(1). Realizing that they were wrong in not taking the plaintiff's previous conviction into account in sentencing him, the stewards called for a review under r 18(2)(c) of the Malayan Racing Association Calendar 1994. It was stipulated under regulation 39 of the MRA Regulations that for a second offence committed under r 144(b)(1), the mandatory minimum period of disqualification of 12 months should be imposed. The stewards proceeded with the review and imposed the mandatory sentence on the plaintiff. The issues before the court were whether: (i) the stewards were empowered to review their own decision; and (ii) whether the review proceedings were conducted fairly.

Held, dismissing the application:

(1) The right of the stewards to review their own decision was clearly set out in r 18(2)(c), which was a rule properly made pursuant to the powers granted to the MRA by its constitution (see p 23A). All the review did was to correct a mistake made earlier by the stewards in order to comply with the mandatory sentence required by regulation 39 (see p 23C).

(2) On perusal of the record, the review proceedings were fairly conducted. There was no breach of natural justice (see p 23E). The matter for the review was simply to put the records right. The review did not deprive the plaintiff his right to be heard and did not constitute a breach of natural justice (see p 23G–H).

[Bahasa Malaysia summary

Plaintif adalah seorang joki profesional. Defendan-defendan adalah pemegang jawatan di dalam Persatuan Lumba Kuda Malaya

('MRA'). Plaintif telah memohon suatu perisytiharan bahawa penyingkirannya selama 12 bulan telah melanggar peraturan-peraturan perlumbaan MRA, melanggar keadilan asasi, ultra vires dan tidak sah dan tidak berkuasa dan meminta suatu perintah bahawa defendan-defendan dihalang daripada melaksanakan penyingkiran tersebut. Fakta-faktanya adalah bahawa plaintif telah dituduh dan disabitkan di bawah k 144(a) Kalendar Persatuan Lumba Kuda Malaya 1994 dan disingkirkan selama 12 bulan. Plaintif merayu dan pengelola telah meminda tuduhan, memutuskan beliau bersalah dan menggantung beliau selama enam bulan di bawah k 144(b)(1). Menyedari bahawa mereka telah melakukan kesilapan kerana tidak mengambil kira kesalahan pertama plaintif dahulu, pengelola telah meminta untuk kajian semula di bawah k 18(2)(c). Adalah dinyatakan di bawah peraturan 39 Peraturan MRA bahawa bagi kesalahan kedua yang dilakukan di bawah k 144(b)(1), hukuman minima yang wajib dikenakan adalah penyingkiran selama 12 bulan. Pengelola meneruskan kajian semula tersebut dan menjatuhkan hukuman wajib ke atas plaintif. Isu yang di hadapan mahkamah adalah sama ada: (i) pengelola berkuasa untuk mengkaji semula keputusan mereka; dan (ii) prosiding kajian semula itu dilakukan dengan adil.

Diputuskan, menolak permohonan:

(1) Hak untuk pengelola mengkaji semula keputusan mereka ada dinyatakan dengan jelas di dalam k 18(2)(c), satu kaedah yang telah dibuat dengan betul mengikut kuasa yang diberikan oleh perlembagaan MRA (lihat ms 23A). Apa yang dilakukan oleh kajian semula itu hanyalah membetulkan kesilapan yang telah dilakukan oleh pengelola agar ia menurut hukuman wajib di bawah peraturan 39 (lihat ms 23C).

(2) Dari penyemakan rekod, prosiding kajian semula itu telah dilakukan dengan adil. Tiada perlanggaran undang-undang asasi berlaku (lihat ms 56E). Hal yang dikaji semula hanyalah untuk memperbetulkan rekod. Kajian semula tersebut tidak merampas hak plaintiff untuk didengar dan tidak melahirkan perlanggaran undang-undang asasi (lihat ms 23G–H).]

Notes

For cases on declaration, see 1 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 321–382.

Cases referred to

Singapore Amateur Atheletics Association v Haron bin Mundir [1994] 1 SLR 47 (refd)

Woon Kwok Cheng v HR Hochstadt & Ors [1997] 2 MLJ 795 (refd)

Woon Kwok Cheng v Tan Sri Datuk Chang Min Tat & Ors [1994] 2 AMR 1377 (refd)

Legislation referred to

Societies Act 1966

CP Mahendran (*RR Chelliah Brothers*) for the plaintiff.
Tang Woh Heng (*Arifin & Partners*) for the defendants.

Cur Adv Vult

Nik Hashim J: The plaintiff is a professional jockey. The defendants are office bearers of the Malayan Racing Association ('MRA') which was registered under the Societies Act 1966.

The plaintiff was charged under r 144(a) of the Malayan Racing Association Calendar 1994 for not running the horse 'Imperial Scholar' on its merit and was disqualified for 12 months by the Stipendiary stewards of the MRA on 5 July 1997. On appeal by the plaintiff on 30 August 1997, the Racing stewards ('the stewards') of the MRA amended the charge, found him guilty for failing to take all reasonable and permissible measures to ensure that his horse was given full opportunity to win or to obtain the best possible place in the race and ordered him to be suspended for six months under r 144(b)(1). Realising that they were wrong for not taking the previous conviction into account in passing the sentence and by so doing had not imposed the mandatory minimum period of disqualification of 12 months as required under the MRA regulation 39 (on Penalties on Riding Offences) for a second offence committed under r 144(b)(1), the stewards wrote to inform the plaintiff of the error in the sentence (six months suspension) and that they would be exercising their right to review the sentence under r 18(2). The plaintiff wrote back to the stewards contending that they do not have the jurisdiction and power to review their own decision and that the matter is res judicata. The stewards replied that they have the power to review under r 18(2) and that the doctrine of res judicata does not apply. Since the plaintiff failed to attend the review hearing fixed for 19 December 1997, the stewards fixed 9 January 1998 as a new date for the review hearing. The plaintiff asked for an adjournment of the review on the grounds that he required a copy of the transcript of the appeal for the review. The stewards replied that a copy of the transcript is not necessary as the review is not an appeal against sentence by the plaintiff.

On 9 January 1998, the plaintiff appeared with his counsel before the stewards. The plaintiff's counsel raised several preliminary issues and they were:

(i) The plaintiff was not aware of r 18(2) until 31 December 1997;

(ii) What were the merits upon which the decision to review was made?

(iii) What is the procedure for a review?

(iv) The plaintiff has not been furnished with a copy of the transcript of the appeal held on the 30 August 1997 which is the subject of review and that he be furnished with a copy;

(v) An adjournment of the hearing in view of the above circumstances.

The stewards adjourned the proceedings to consider the preliminary issues and held that they had no merits and dismissed the same. The plaintiff and his counsel then informed the stewards that they would take no further part in the proceedings and left. The stewards proceeded to review their decision on 30 August 1997. On 19 January 1998 the defendants informed the plaintiff that he was disqualified for a period of 12 months from 30 August 1997.

Hence the application before me. The plaintiff was seeking a declaration that the disqualification of 12 months by the stewards on 9 January 1998 was in breach of the rules of racing of the MRA, in breach of natural justice, ultra vires and void and of no effect and sought for an order that the defendants be restrained from giving effect to the disqualification.

On 11 November 1998, after hearing counsel from both sides, I dismissed the application with costs.

It is to be noted that the plaintiff's application to quash the decision of the stewards handed down on the 9 January 1998 by way of certiorari vide Kuala Lumpur High Court S5–25–03–1998 was dismissed by James Foong J on 20 March 1998.

It is not in dispute that the MRA is a private and domestic body, and the powers which the MRA exercises over those who like the plaintiff by reason of being a jockey licensed by the MRA, agreed to be bound by the Rules of Racing derived from the agreement of the parties which give rise to private rights based on the contract and that the only remedies available to the applicant are private law remedies, and not a matter for judicial review. The relationship between the plaintiff and the MRA is founded on contract, and the Rules of Racing and the regulations are the terms of the contract (see *Woon Kwok Cheng v Tan Sri Datuk Chang Min Tat & Ors* [1994] 2 AMR 1377; *Woon Kwok Cheng v HR Hochstadt & Ors* [1997] 2 MLJ 795).

It is trite law that the High Court in its supervisory role in reviewing a decision of a private or domestic tribunal in an action by an aggrieved party under the private law remedy by way of a declaration should not be concerned with the guilt or innocence of the aggrieved party but with the regularity of the proceedings whether such proceedings were conducted with adherence to the requirements of natural justice. The role of the court is to examine only the correctness of the decision-making process and not the correctness of the decision. The court should not conduct a rehearing of the case. The jurisdiction of the court in reviewing the decisions of domestic tribunal cannot be attacked on the ground that it is against the weight of evidence. The court has no power to review the evidence for the purpose of deciding whether the tribunal came to a right conclusion. It is not the function of the court to resolve issues of fact which are properly within the sphere of the tribunal's inquiry (see *Singapore Amateur Athletics Association v Haron bin Mundir* [1994] 1 SLR 47 at p 59).

As I see it, there are only two issues in this case: (1) whether the stewards are empowered to review their own decision and (2) whether the review proceedings were conducted fairly.

A The right of the stewards to review their own decision is clearly set out in r 18(2)(c), which is a rule properly made pursuant to the powers granted to the MRA by its constitution. The r 18(2)(c) states:

> The Racing stewards shall have power at their absolute discretion, on their own motion, to review:
>
> B (a) ...
>
> (b) ...
>
> (c) where justice requires or permits, their own previous decisions. (p 168 of Encl 8)

C It is not in dispute that the plaintiff had a previous conviction. By virtue of the MRA Regulation 39 a minimum period of disqualification of 12 months for the second offence shall be imposed. The provision is mandatory. All the review did was to correct a mistake made earlier by the stewards in order to comply with the mandatory sentence required by regulation 39. Under r 18(2)(c) the stewards are empowered to conduct the review. The plaintiff is bound by the MRA rules and regulations, and his contention that he was D not aware of the r 18(2)(c) cannot be accepted. The plaintiff is a veteran jockey with some 20 years experience. He is no novice and must be well acquainted with racing matters. He must be presumed to have knowledge of the terms of the Rules of Racing which were incorporated in the contract under which he held his licence. Indeed, the MRA would be in breach of E the regulation 39 if no correction was made to the sentence. Therefore, the plaintiff's complaint against the stewards reviewing their own decision has no merit whatsoever.

On perusal of the record, I found that the review proceedings were fairly conducted. There was no breach of natural justice. The plaintiff was clearly informed by letter dated 13 November 1997 (exh KK–6 at p 55 of encl 8) F of the reason for the review that the stewards were obliged to impose the mandatory sentence for a second offence. The plaintiff was represented by counsel at all material times, and his solicitor replied that the stewards have no jurisdiction and power to review, and res judicata applies and by reason thereof the plaintiff would not attend the review hearing (exh KK–8, KK–9 G at pp 62, 65). The plaintiff attended the review on 9 January 1998 where he was informed of the purpose of the review but the plaintiff and his counsel chose not to participate in the review hearing. The matter before the stewards was simply to put the records right, ie to impose the mandatory minimum sentence as required under regulation 39. The review did not hear any fresh evidence. Thus, the failure to provide the plaintiff a copy of H the transcript of the appeal before the review did not deprive the plaintiff of his right to be heard, and does not constitute a breach of the rules of natural justice. The plaintiff was given every opportunity, but he chose not to be heard by refusing to participate further in the review when his request for an adjournment was rejected. The plaintiff could have advanced his argument that his first conviction was to be considered as 'spent' and therefore to be I disregarded. But he chose not to do so or to be heard. Therefore, he cannot now complain that he was not given an opportunity to be heard. The plaintiff knew pretty well that the review was a review of the sentence for the

purpose of complying with the mandatory minimum sentence. The transcript would only show that the stewards made an error in not imposing the mandatory minimum sentence, and not to the issue of conviction.

It is worth to note that the plaintiff was never charged twice for the same offence on 9 January 1998. Here it is just a case where the stewards had made a mistake as to the sentence to be imposed and by virtue of r 18(2)(c) the stewards is empowered to review their own previous decision, which is what they did in this case.

Similarly, the doctrine of res judicata and estoppel as raised by the plaintiff do not apply in the present case. There was no duplicity of proceedings on the same matter. There were no two prosecutions for the same offence. There was only one conviction, but the sentence was altered. With regard to Mr Patterson's opinion on previous convictions, I accept the affidavit evidence of Kaka Singh, the Secretary of MRA, affirmed on 24 July 1998 at Encl 21 that there was no precedent or general consensus that previous convictions of more than a year old would be disregarded for the purposes of sentencing and considered as 'spent'. In the case of *KC Aw-Yong*, the stewards there made the same mistake but at the material time, the stewards had no power to review their own decision. Thus, Mr Patterson's opinion on previous convictions was a personal opinion and should be disregarded.

The plaintiff's counsel argued that the plaintiff accepted the amended charge under r 144(b)(1) without challenge on the assumption that he would be suspended for six months. And according to counsel, the said assumption was not adhered to by the stewards and by reason thereof operated to the detriment of the plaintiff.

I hold that the doctrine of legitimate expectation has no application here. The plaintiff by his counsel unequivocally accepted the reduced charge, and pleaded guilty to the same. He was sentenced accordingly. There was no issue of any representation, implied or otherwise, that a previous conviction after a lapse of time may be considered an expired or 'spent' conviction. On the facts before me, I was satisfied that the proceedings before the stewards were fairly conducted. The rules of natural justice had been observed. The decision was honestly reached. The plaintiff was rightly convicted and sentenced.

Accordingly, I dismissed the application with costs.

Application dismissed with costs.

Reported by Zahid Taib